

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HEIDI STANLEY and RON STANLEY,

Plaintiffs,

v.

STERLING FINANCIAL CORP., a
Washington Corporation; STERLING
SAVINGS BANK, a Washington
Corporation; SANDLER O'NEILL +
PARTNERS, L.P., Delaware Limited
Partnership,

Defendants.

No. CV-12-0357-EFS

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION TO REMAND AND FOR
TERMS**

On July 19, 2012, a hearing occurred in the above-captioned matter. Plaintiffs Heidi and Ron Stanley were represented by Nicholas Kovarik. Gregory Hollon appeared for Defendants Sterling Financial Corp. ("Sterling Financial") and Sterling Savings Bank ("Sterling Savings") (collectively, "Sterling").¹ Before the Court is Plaintiffs' Motion to Remand and for Terms. ECF No. [7](#). After reviewing the submitted material and relevant authority and hearing from counsel, the Court is fully informed. This Order supplements and memorializes the Court's oral ruling granting the request to remand this lawsuit to state court

¹ Counsel did not appear for Sandler O'Neill & Partners, L.P. ("Sandler").

1 and denying fees and costs to Plaintiffs.

2 **A. Background**

3 Mrs. Stanley worked for Sterling since 1985. After twenty-three
4 years with Sterling, Mrs. Stanley became Sterling's Chief Executive
5 Officer (CEO), executing an employment contract in which the parties
6 agreed that if Mrs. Stanley was terminated without cause she would
7 receive severance pay. Mere months later, however, Sterling requested
8 that Mrs. Stanley sign an amendment revoking the severance-pay provision
9 because Sterling understood that it was unable to provide such
10 severance-pay benefits if it was to receive "bailout" funds from
11 Congress. Mrs. Stanley signed the amendment.

12 In May 2009, Mrs. Stanley was diagnosed with breast cancer. Within
13 a month, she underwent breast surgery and a hysterectomy. She then also
14 received daily radiation therapy until mid-September 2009, while she
15 continued to work full time. In September 2009, Sterling informed Mrs.
16 Stanley that she would not participate in the capital-raising "road
17 show." And near the end of September 2009, she learned that Sterling
18 was forcing her to step down as CEO but she was hopeful she would
19 continue to be employed by Sterling in some capacity. Approximately two
20 weeks later, Sterling fired Mrs. Stanley.

21 Believing that she was wrongfully terminated because of her gender
22 and medical condition, Mrs. Stanley retained counsel. On March 30,
23 2012, her counsel sent a pre-litigation letter proposing settlement to
24 Sterling's counsel. ECF No. [12](#) Ex. A. This letter details Mrs.
25 Stanley's financial demand for each of her claimed damages: back pay

1 (\$1,625,000), front pay (\$4,550,000), lost benefits (\$30,482), lost
2 retirement (\$480,000), loss of consortium (\$100,000), emotional distress
3 (\$1,000,000), and attorney fees and costs (\$38,500). Attached to the
4 letter was a copy of the complaint that would be filed by the Stanleys
5 in state court if a settlement was not achieved by noon on April 20,
6 2012. Id. Sterling did not accept the settlement offer, but instead
7 filed a declaratory judgment action on April 19, 2012, E.D. Wash. CV-
8 12-214-EFS, which asks the Court to find that Troubled Asset Relief
9 Program (TARP) laws prevented Sterling from providing Mrs. Stanley with
10 any severance payment or benefit.

11 On April 20, 2012, Mrs. Stanley and her husband filed their
12 anticipated complaint in state court alleging discrimination under RCW
13 49.60 et seq. and loss of consortium. On May 18, 2012, Sterling removed
14 the lawsuit to federal court. ECF No. 1. The Stanleys ask the Court to
15 remand this lawsuit back to state court.

16 **B. Authority and Analysis**

17 The Stanleys ask the Court to remand this lawsuit to Spokane County
18 Superior Court because they assert only state-law claims. Sterling and
19 Sandler oppose the motion, contending that federal jurisdiction exists
20 because the Stanleys' claims are preempted by the Employee Retirement
21 Income Security Act (ERISA), 29 U.S.C. §§ 1001 et seq., and are
22 compulsory counterclaims that must be asserted in federal court.

23 A defendant may remove "[a]ny civil action brought in a state
24 court" which could have been brought in federal district court. 28
25 U.S.C. § 1441. Accordingly, in order to be removable, the civil action

1 must present federal question jurisdiction under 28 U.S.C. § 1331 or
2 diversity-of-citizenship jurisdiction under § 1332.

3 The parties agree that diversity-of-citizenship is not present.
4 Therefore, the sole question is whether the Stanleys' state-court action
5 satisfies § 1331 federal-question jurisdiction.

6 Section 1331 states, "[t]he district courts shall have original
7 jurisdiction of all civil actions arising under the Constitution, laws,
8 or treaties of the United States." 28 U.S.C. § 1331. This statute is
9 generally invoked by a plaintiff asserting a cause of action under a
10 federal statute. However, a claim also "aris[es] under" federal law if
11 it is a state-law claim that "implicate[s] significant federal issues."
12 *Graber & Sons Metal Prods., Inc. v. Darue Eng'g & Mftg.*, 545 U.S. 309,
13 312 (9th Cir. 2005). This doctrine "captures the commonsense notion
14 that a federal court ought to be able to hear claims recognized under
15 state law that nonetheless turn on substantial questions of federal law,
16 and thus justify resort to the experience, solicitude, and hope of
17 uniformity that a federal forum offers on federal issues." *Id.*

18 Defendants maintain that federal-question jurisdiction exists
19 because the Stanleys' claims are preempted by the Employee Retirement
20 Income Security Act, 29 U.S.C. §§ 1001 *et seq.*, given that Mrs. Stanley
21 seeks benefits under an ERISA-governed plan. The Court disagrees.

22 First, the Stanleys are not asserting claims preempted by ERISA.
23 The Stanleys' state-law discrimination, state-law loss of consortium,
24 and state-law tortious interference with contractual relationships and
25 business expectancies claims are not preempted by ERISA. See *Lane v.*

1 Goren, 743 F.2d 1337, 1340 (9th Cir. 1984) (determining that state laws
2 prohibiting employment discrimination are not preempted by ERISA).

3 Second, to prove these state-law claims, the Stanleys need not
4 establish a violation of federal law. *C.f. Graber & Sons Metal Prods.,*
5 *Inc.*, 545 U.S. at 315 ("[W]hether Grable was given notice within the
6 meaning of the federal statute is thus an essential element of its quiet
7 title claim, and the meaning of the federal statute is actually in
8 dispute; it appears to be the only legal or factual issue contested in
9 the case."). Defendants contend that, because TARP prevented them from
10 awarding Mrs. Stanley retirement/severance benefits, the determination
11 of her damages involves a question of federal law. However, this
12 federal issue only arises as a result of Defendants' defense that any
13 retirement/severance benefits requested by Mrs. Stanley are preempted by
14 ERISA: and a defendant may not create a federal question through a
15 defense. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987)
16 ("[T]he presence of a federal question . . . in a defensive argument
17 does not overcome the paramount policies embodied in the well-pleaded
18 complaint rule—that the plaintiff is the master of the complaint, that
19 a federal question must appear on the face of the complaint, and that
20 the plaintiff may, by eschewing claims based on federal law, choose to
21 have the cause heard in state court.").

22 Further, Plaintiffs maintain that Mrs. Stanley is not seeking
23 retirement/severance benefits from Sterling. And she need not seek such
24 benefits in order to prevail under the asserted claims. Accordingly,
25 the Court finds the Amended Complaint's claims do not "turn on

1 substantial questions of federal law" and do not "aris[e] under" federal
2 law. As a master of their claims, the Stanleys are permitted to bring
3 state law claims in state court. See *Hunter v. United Van Lines*, 746
4 F.2d 635, 639 (9th Cir. 1984). Accordingly, the Court finds
5 federal-question jurisdiction is not present.

6 Defendants also argue that remand will undermine Federal Rule of
7 Civil Procedure 1's guideline that civil actions receive a "just,
8 speedy, and inexpensive determination" because the Stanleys' claims are
9 compulsory counterclaims to those claims asserted by Sterling in its
10 first-filed federal declaratory-judgment lawsuit.

11 In regard to compulsory counterclaims, Federal Rule of Civil
12 Procedure 13(a)(1) states:

13 A pleading must state as a counterclaim any claim that—at
14 the time of its service—the pleader has against an opposing
party if the claim:

15 (A) arises out of the transaction or occurrence that
is the subject matter of the opposing party's claim; and

16 (B) does not require adding another party over whom
the court cannot acquire jurisdiction.

17 Fed. R. Civ. P. 13(a)(1). The Court finds the Stanleys' claims do not
18 "arise[] out of the transaction or occurrence that is the subject matter
19 of the opposing party's claim" because they are not seeking recovery of
20 severance/retirement benefits against Sterling.

21 Accordingly, the Court remands this lawsuit to state court. The
22 Court denies the Stanleys' request for attorneys fees under 28 U.S.C. §
23 1447(c) given the unusual circumstances and issues involved in this
24 lawsuit and the related declaratory-judgment lawsuit.

25 ///

1 **C. Conclusion**

2 For the above-given reasons, **IT IS HEREBY ORDERED:**

3 1. Plaintiffs' Motion to Remand and for Terms, **ECF No. 7**, is
4 **GRANTED IN PART** (remand) **and DENIED IN PART** (fees and costs).

5 2. All pending hearings and deadlines are **STRICKEN**.

6 3. This lawsuit is **REMANDED** to Spokane County Superior Court,
7 Case No. 12201538-9.

8 4. This file shall be **CLOSED**.

9 **IT IS SO ORDERED.** The District Court Executive is hereby directed
10 to enter this Order and furnish copies to counsel and the Spokane County
11 Superior Court.

12 **DATED** this 19th day of July 2012.

13
14 s/Edward F. Shea

EDWARD F. SHEA

15 Senior United States District Judge

16 Q:\Civil\2012\0357.remand.lc1.frm
17
18
19
20
21
22
23
24
25